



DAE
#888

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450 on the date indicated below.

Christine Spare
Name of Person Mailing Paper or Fee
Christine Spare May 10, 2004
Signature Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:)
Rene Langhans) Examiner: C. Goodman
Title: ROTARY CUTTING UNIT) Group Art Unit: 3734
Serial No.: 08/883,685)
Filed: June 7, 1997) (Atty. Docket No. 2821-193)

RECEIVED

MAY 13 2004

OFFICE OF PETITIONS

Hartford, Connecticut, May 10, 2004

Mail Stop PETITION
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450
ATTN: MARK POLUTTA

PETITION TO THE DIRECTOR

DEAR SIR:

Applicant hereby requests an extension of the term of the above-identified patent equal to approximately 1,183 days due to examination delay pursuant to 37 CFR § 1.701.

The reasons for the request are set forth following:

1) The Notice of Allowance issued March 23, 2004 in the above-identified application indicates a patent term adjustment of zero (0) days.



2) Pursuant to 37 CFR § 1.701 (a)(3), the term of the above-identified patent should be extended because the issuance of the patent was delayed due to Appellate review by the Board of Patent Appeals and Interferences, remand to the Examiner for clarification of the record, and further consideration by the Board.

a) As set forth in the Notice of Allowability, claims 1, 2, 6-8, 10-12, 14-20, and 22 were determined allowable due to the decision rendered by the Board reversing the Examiner's rejection of claims 1-3, 5, 6, 8, 10-12 and 14-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,116,098 to Suzuki et al. The decision also reversed several rejections of the claims under 35 U.S.C. § 112, first paragraph. (See Notice of Allowability, mailed March 23, 2004, p. 2, ¶ 1; Decision on Appeal dated November 6, 2003, p. 13, ll. 17-19).

b) The Decision on Appeal did not render the above-identified claims allowable because the Appeal Board sustained one rejection of claims 1-3, 5, 6, 8, 10-12 and 14-20 under 35 U.S.C. § 112, second paragraph, for indefiniteness based on means-plus function language recited in independent claims 1 and 18. The section 112 rejection identified by the Board necessitated the filing of a Request for Continued Examination (RCE) filed on December 16, 2003 and an Amendment to the Claims. Both the RCE and the Amendment to the Claims were filed simply to remove the means-plus function language from claims 1 and 18 that was determined indefinite by the Appeal Board. The Amendment to the Claims rendered the claims allowable as set forth in the Notice of Allowance.

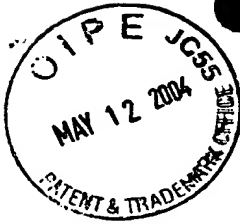
c) Accordingly, if the Examiner had identified the means-plus function language recited in claims 1 and 18 as not having adequate foundation in the specification as the reason for the rejection of claims 1 and 18 under 35 U.S.C. §

112, second paragraph, the objected to language could have been removed, and independent claims 1 and 18 could have been allowed prior to the Appeal process, or the Decision on Appeal would have resulted in allowed claims.

3) Therefore, because, the Examiner's rejection under 35 U.S.C. § 102(b) which prevented allowance of the Applicant's claims 1-3, 5, 6, 8, 10-12 and 14-20 based on the prior art was overturned by the Appeal Board, and because the section 112 rejection sustained by the Appeal Board could have easily been corrected without the appeal process, the Applicant is entitled to a patent term extension pursuant to 37 CFR § 1.701(a)(3).

4) As set forth in 37 CFR § 1.701 (c)(3), the period of delay due to Appellate Review under § 1.701(a)(3), is the sum of the number of days beginning on the date on which an Appeal was filed, and ending on the date of a final decision by the Appeal Board in favor of the Applicant. In this case, a Notice of Appeal was filed on August 8, 2000, and the above-identified Decision on Appeal, favorable to the Applicant, was rendered November 6, 2003. Accordingly, Applicant requests a patent term adjustment of approximately 1,183 days.

For at least the above-identified reasons, Applicant respectfully requests the term of the above-identified patent be extended approximately 1,183 days. It is also requested that this Petition be acted on upon at the earliest possible date such that any term extension granted can appear on the face of the issued patent.



No fee is believed to be due in connection with filing this Petition. However, please charge any deficiencies to our Deposit Account No. 13-0235.

Respectfully submitted,

By

Donald J. MacDonald
Registration No. 42,823
Attorney for Applicant

McCormick, Paulding & Huber LLP
CityPlace II
185 Asylum Street
Hartford, Connecticut 06103-3402
(860) 549-5290